

### REMARKS

Claims 1-21 are pending prior amending the application. The Examiner rejects claim 4 under 35 USC §112, second paragraph as lacking sufficient antecedent basis. The Examiner rejects claims 1-21 under 35 USC §103(a) as being unpatentable over Ni (U.S. Patent No. 6,680,910) in view of Hinchley (U.S. Patent No. 6,490,250). Applicants amend claim 4. Applicants add no new matter and request reconsideration.

#### Claim Rejections – 35 USC §112, ¶2

The Examiner rejects claim 4 under 35 USC §112, second paragraph as lacking sufficient antecedent basis. Applicants amend claim 4 to obviate the Examiner's rejection.

#### Claim Rejections – 35 USC §103

The Examiner rejects claims 1-21 under 35 USC §103(a) as being unpatentable over Ni in view of Hinchley. Applicants respectfully traverse the Examiner's rejection.

Claim 6 recites *redundancy encoding means for redundancy encoding the transcoded data prior to transmission if the monitored bandwidth is less than a second preset value.*

Claims 3, 4, 5, 6, 12, 13, 16, 20, and 21 recite similar limitations.

Applicants agree with the Examiner that neither Ni nor Hinchely teach the recited redundancy encoder. Office Action, 12/02/2005, pages 3 and 6. The Examiner, however, appears to be taking Official Notice without documentary evidence of the recited claim elements and limitations by stating "it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to use a redundancy encoder to keep encoding the content till it is transferable over the network without losing any data in order to ensure that the end user is able to read the receiving data." Office Action, 12/02/2005, pages 4 and 6.

Applicants respectfully disagree with the Examiner's Official Notice, as "[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03. As such, "assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of

the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice." MPEP 2144.03

Since the Examiner is taking Official Notice of claim elements and limitations that corresponds to the state of the art at the time of the invention in a highly-specialized area of technology, Applicants respectfully request the Examiner provide documentary support for the Official Notice or withdraw this rejection to claims 3, 4, 5, 6, 12, 13, 16, 20, and 21. Applicants further traverse the Official Notice, as it was not obvious at the time of the invention to redundancy encode data that has already been transcoded, much less to redundancy encode the transcoded data in response to the monitored network bandwidth. Applicant therefore respectfully requests that this rejection be withdrawn and the pending claims be allowed to issue.

Claim 1 recites *a transcoder for transcoding a frame into a reduced data content frame if the monitored bandwidth for the corresponding frame transmission is less than a first preset value, the transcoding capable of increasing a rate that each reduced data content frame is transmitted from the buffer over the network for the corresponding monitored bandwidth.* Claims 6, 10, 14, and 18 recite similar limitations.


Applicants agree with the Examiner that Ni does not disclose the recited transcoder. The Examiner alleges Hinchley's multimedia encoding system 120 discloses the recited transcoder. The multimedia encoding system 120, however, compresses all multimedia data 230 that it receives, and therefore does not transcode according to the recited first preset value of the monitored bandwidth as the claims require. Hinchley, col. 3, lines 27-44; Figure 2. Furthermore, neither Ni nor Hinchley provide any motivation to combine the inventions described therein. The Examiner alleges "it would have been obvious for a person having ordinary skill in the art at the time of the invention to replace Ni flow control frames with Hinchley's transcoders in order to control congestion over the network." Office Action, pages 3 and 4. Ni's system 100, however, receives packets over a network and then sends a flow control packet to the transmitter of the packets indicating the rate that the packets are received. Even if Hinchley taught *a transcoder*, this combination would not have provided motivation for replacing Ni's flow control packets with the recited transcoder, as Ni's packets have already been received from the network. Put differently, since there is no motivation to transcode data after it has been received from a network, combining the references, as the Examiner suggests, is to no avail. Applicant therefore respectfully requests that this rejection be withdrawn and the pending claims be allowed to issue.

### CONCLUSION

For the foregoing reasons, reconsideration and allowance of all claims after amending the application. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

  
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Jeffrey J. Richmond  
Reg. No. 57,564

MARGER JOHNSON & McCOLLOM, P.C.  
210 SW Morrison Street, Suite 400  
Portland, OR 97204  
503-222-3613

Customer No. 20575